

RESPONSE TO COMMENTS

DRAFT HAZARDOUS WASTE MANAGEMENT CORRECTIVE ACTION PERMIT

This document has been prepared in accordance with Tennessee Rule 1200-1-11-.07(7)(j). It has resulted from the Tennessee Department of Environment and Conservation (TDEC) Division of Solid Waste Management's (DSWM) reissuance of a draft corrective action permit to the U.S. Department of Energy and the National Nuclear Security Administration's Oak Ridge Reservation. The facility is located in Oak Ridge, Tennessee and is identified by EPA Installation I.D. Numbers TN0 89 009 0004, TN1 89 009 0003 and TN3 89 009 0001. The draft permit reissuance requires DOE to perform RCRA corrective action at the Oak Ridge Reservation (ORR). Part A of this document describes the efforts made by the DSWM to obtain public input. Part B summarizes and responds to all significant comments received.

A. Public Involvement Opportunities

DSWM issued a public notice of the proposed reissuance of the corrective action permit in the August 6, 2004 editions of the Oak Ridger and the Roane County News. The notice was also published in the August 9, 2004 edition of the New Herald in Lenoir City. Three 30-second announcements of the action, referencing the notice published in the newspapers, were also provided over each of the following radio stations: WKVL-AM/FM, Knoxville; and WNOX AM/FM, Knoxville, Tennessee. The public notice advised that copies of the draft permit and modification with associated materials were available for review in Knoxville at the TDEC Regional Environmental Assistance Center and in Oak Ridge at the TDEC DOE-Oversight Division Office, the Oak Ridge Public Library and the Oak Ridge Information Center. The public notice also advised that copies of the fact sheet and draft permit were available. It further announced a public hearing set for September 14, 2004 at the DOE Oversight Office, established a 45-day comment period (ending September 20, 2004) and described how interested persons could comment in writing or at the hearing on the proposed action.

B. Public Comment/Response Summary

Since the only attendees were facility representatives, a public hearing was not held. Instead, an informal discussion between facility representatives and State personnel provided another opportunity for the State to respond to facility questions and to assist them in finalizing their written comments. There were no comments submitted by the general public during the 45-day draft permit comment period. Comments and responses to the draft permit follow.

FACILITY COMMENTS

COMMENT N0. 1: TDEC has proposed to reissue this Corrective Action (CA) Permit without specifically attaching the requirements to a current Hazardous Waste Management Unit (HWMU) operating or post-closure care permit. We concur with TDEC's decision in this regard, but wish to obtain clarification of an issue that has arisen as a result. Specifically, the CA Permit includes numerous Conditions that are duplicative of Conditions in the HWMU Permits. Many of these Conditions require notices, reports, or other information to be submitted to TDEC. It is our understanding that TDEC will not expect or require duplicate notices, reports, or other information to satisfy both the corrective action and the HWMU permit conditions. We request confirmation of that understanding.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 2: In accordance with the first sentence in Condition I.A, which states "The permittee is required to perform corrective action in accordance with the conditions of this permit", it is our understanding that the various standard and general conditions of this permit are intended by TDEC to apply to corrective action activities rather than to hazardous waste management in general. Some of the conditions specify applicability to corrective actions (e.g., I.D.11.(a), for planned changes; I.F, for fees; II.B, for training), while others offer no such specificity. We request confirmation of our understanding that all of the conditions of this permit apply only to corrective actions, regardless of whether such applicability is specifically addressed within the condition.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 3: Under Condition I.C, Definitions, number 20, "unit", includes septic tanks, drain fields and transfer stations. However, the existing definition of Solid Waste Management Unit (SWMU) in the current Hazardous and Solid Waste Amendments (HSWA) Permit, which includes the list of examples of a "unit", does not include septic tanks, drain fields or transfer stations as being regulated units. Previous SWMU lists included septic tanks but, as a result of discussions with Environmental Protection Agency (EPA) staff, they were removed. Similarly, the satellite accumulation areas (SAAs), 90-day accumulation areas (90DAAs), used oil areas, and PCB waste storage areas that were included on previous SWMU lists were subsequently removed based on agreements with EPA. It is our understanding that our current practice of not including septic tanks, SAAs, 90DAAs, used oil areas, and PCB storage areas on our lists of SWMUs/AOCs will be acceptable to TDEC. We request confirmation of that understanding.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 4: The definition of "unit" includes the term "transfer station". It is our understanding that this term is used by TDEC to describe a "transfer facility" as defined in TN Rule 1200-1-11-.01(2)(a). We request confirmation of that understanding.

RESPONSE: TDEC confirms your understanding and has changed the term station to facility.

COMMENT N0. 5: Condition I.D.10 provides the signatory requirement for applications, reports, or other information submitted to TDEC. This requirement warrants some clarification

due to the fact that this permit has multiple permittees, and the fact that no applications will be submitted. Consistent with current practice for the existing hazardous waste permits, it is our understanding that a single certification from any permittee will satisfy the certification requirement for required notices, reports, and other information requested by TDEC. Further, it is our understanding that DOE and NNSA, in accordance with federal procedures, together with the contractors with responsibilities for corrective actions under this permit, will determine the appropriate official (or officials when permittees determine that multiple certifications are required), to certify the information. We request confirmation that these practices will continue to satisfy permit requirements.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 6: Condition I.F, Annual Maintenance Fees, establishes fees for hazardous waste corrective actions that could become a significant budget expense. Currently, the fees are: base fee of \$5000 plus the following: \$2000 for Confirmatory Sampling; \$4000 for RCRA Facility Investigation; \$3000 for Corrective Measures; and \$2000 for Interim Measures. It is our understanding, based on discussions with TDEC staff, that: (1) the fees would be imposed at the ORR level (one base fee and one lump fee per any number of Solid Waste Management Units (SWMUs)/Areas of Concern (AOCs) on the ORR operating under a given corrective action level), and (2) the fees would not apply until corrective actions were being implemented under the Permit. We request confirmation of these understandings

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 7: Condition II.A requires an appropriate level of security for the facility. Based on recent discussions with TDEC staff, it is our understanding that this requirement does not apply to SWMUs/AOCs being addressed under the Federal Facility Agreement (FFA) in accordance with Condition III.A of this permit. Further, it is our understanding that, for SWMUs/AOCs being addressed under this permit, “appropriate security measures”, as required by this condition, may consist of the land use and work controls currently implemented at the facility, and that physical barriers and signs are generally not required. We request confirmation of these understandings.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 8: Condition II.B, Personnel Training, paragraph 2, Timing, states “Facility personnel shall successfully complete the programs within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later.” Because the facility has been operating under a corrective active permit for several years, and because some facility personnel may be technically assigned responsibilities for corrective action investigation, remediation, or contingency plan implementation but not actually performing such duties, it is our understanding that employees that are assigned to perform actual corrective action duties will be considered to have been assigned to a new position at the facility at that time. Our concern is that, as written, we could be considered to be in violation of Condition II.B.2 upon issuance of this permit, even though no untrained workers will be performing corrective action duties. We request confirmation of our understanding of this requirement.

RESPONSE: TDEC confirms your understanding.

COMMENT N0. 9: Overall, we question the need for Condition II.H, Waste Minimization. The waste minimization requirements are currently included in all operating permits and are therefore applicable to all facility activities, including wastes generated as a result of corrective actions. A duplicative requirement in this permit does not appear necessary.

As an alternative, if TDEC still believes that this Condition should be retained, we suggest that Attachment 2, and the reference to Attachment 2 in Condition II.H, be deleted. Attachment 2 outlines the objectives of a waste minimization program. However, these objectives are written to reflect an on-going production process rather than a corrective action scenario. Although there is still a role for waste minimization in the corrective action scenario (e.g., minimizing unnecessary PPE), that role is limited because the objective of corrective action is to clean up contaminated areas, thus creating waste. Therefore, the need for a set of objectives, as outlined in Attachment 2, seems unnecessary, and we request they be deleted.

RESPONSE: As requested in the second paragraph of Comment 9, TDEC has removed Attachment 2 and paragraph II.H.3 that references waste minimization certification objectives.

COMMENT N0. 10: Condition III, Specific Conditions for Corrective Actions, includes references to several lists in the Attachments to the Permit. It is our understanding that changes or additions to these lists will not be considered permit modifications, and we request confirmation of that understanding.

RESPONSE: For units not deferred to CERCLA and the FFA, the conditions in Section III specify when permit modifications by the permittee are required. Circumstances that require a formal (public noticed) modification include when the Commissioner determines that an AOC needs to be added to the permit; when a change is made to the corrective action schedule of compliance; and, when a remedy selection for a unit is finalized. All changes to the permit are modifications, but many changes within the corrective action process are automatically made per the corrective action permit conditions.

COMMENT N0. 11: Please add NNSA to the last sentence in III.A because they share ownership with DOE.

RESPONSE: TDEC has made the change as requested.

COMMENT N0. 12: In subparagraph I.D.12(b), the annual report requirement, references I.D.9(b). This should be I.D.11(g).

RESPONSE: TDEC agrees and has made the change as requested.

TDEC COMMENTS

COMMENT N0. 13: After issuing the draft permit, TDEC advised the permittee that EPA and the state had identified several units in Attachment 1, Appendix A, Tables A-1 and A-2 that were

not properly footnoted as RCRA (hazardous and solid waste) regulated units or RCRA Areas of Concern. TDEC required the permittee to review the tables and to identify any other units not properly footnoted.

RESPONSE: TDEC, in conjunction with the permittee, has revised Attachment 1, Appendix A, Tables A-1 and A-2 to footnote the units that were not properly identified in the draft permit as RCRA (hazardous and solid waste) regulated units or RCRA Areas of Concern.

COMMENT N0. 14: After issuing the draft permit, TDEC was advised by the permittee that they had identified more units that should be added to Attachment 3, Summary of Units Subject to Air Emission Standards. Appendix A, Tables A-1 and A-2 that were not properly footnoted as RCRA (hazardous and solid waste) regulated units or RCRA Areas of Concern. TDEC required the permittee to review the tables and to identify any other units not properly footnoted.

RESPONSE: After removing Attachment 2 in response to facility comment 9, TDEC has changed Attachment 3 to Attachment 2. The new Attachment 2, Summary of Units Subject to Air Emission Standards of Tennessee Rule 1200-1-11-.06(32), has been revised to include all units that are not currently listed in an Oak Ridge Reservation hazardous waste operating permit.

COMMENT N0. 15: TDEC has revised the term owner/operator to owners/operators to appropriately reflect that there are two owners and two operators.

COMMENT N0. 16: TDEC has revised paragraph III.I.1 to clarify that Attachment 1, Appendix D summarizes the corrective action schedules in permit section III.